

Report From Agency

BEFORE THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Revisions to Rules on Electric Rate Changes Due to the Cost of Fuel

1-AC-224

Clearinghouse Rule 08-070

ORDER ADOPTING FINAL RULES

The Wisconsin Public Service Commission proposes an order to repeal and recreate ch. PSC 116, relating to a fuel cost rate adjustment process for electric utility service.

REPORT TO THE LEGISLATURE

Set forth as Attachment A.

FISCAL ESTIMATE

There are no additional costs to state or local government as a result of these changes. A completed Fiscal Estimate form is included as Attachment B. There is also no quantitative financial impact on the private sector. However, these changes increase the stability of utility rates and decrease adverse impacts on both utilities and ratepayers caused by volatility in the cost of fuel and related items.

EFFECTIVE DATE

These rules shall take effect on the later of January 1, 2011, or the first day of the month following publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

CONTACT PERSON

Questions from the media may be directed to Teresa Weidemann-Smith, Governmental and Public Affairs, at (608) 266-9600. Other questions regarding this matter should be directed to docket coordinator James Wagner at (608) 267-9768, or James.Wagner@wisconsin.gov; or Robert Norcross at (608) 266-0699, or Robert.Norcross@wisconsin.gov. Hearing or speech-impaired individuals may use the Commission's TTY number. If calling from Wisconsin use (800) 251-8345; if calling from outside Wisconsin use (608) 267-1479.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Anyone who needs to obtain this document in a different format should contact the docket coordinator listed above.

Dated at Madison, Wisconsin, August 30, 2010

By the Commission:

/Sandra J. Paske/

Sandra J. Paske
Secretary to the Commission

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Attachments

REPORT TO THE LEGISLATURE

A. NEED FOR THE RULE

The current ch. PSC 116 fails to adequately address new circumstances with respect to fluctuations in fuel cost. Increased volatility in the price of fuel used to generate electricity has significantly augmented a utility's risk of an unreasonable loss when costs go up and a customer's risk of paying unreasonable rates when costs go down. This situation prompted the Commission to seek a redesign of the fuel cost rate adjustment process, resulting in this Final Rule.

B. PLAIN LANGUAGE ANALYSIS

The analysis is set forth as Attachment A1.

C. TEXT OF THE RULE

The text of the Final Rule is set forth as Attachment A2.

D. PUBLIC HEARING ATTENDEES AND COMMENTS

The names and comments of those who attended the public hearing and those who submitted written comments, as well as Commission responses to their comments, are set forth as Attachment A3.

E. RESPONSE TO LEGISLATIVE COUNCIL REPORT

A copy of the Legislative Council's report, and responses to it, are included with this Report as Attachment A4.

F. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Final Rule is not expected to affect small business as defined in s. 227.114 (1), Stats.

PLAIN LANGUAGE ANALYSIS

A. Statutory Authority and Explanation of Authority:

This rule is authorized under ss. 196.02 (3), 196.20 (4) (d) and 227.11, Stats.

The Commission may promulgate a rule with respect to a fuel cost rate adjustment process for electric utility service under ss. 196.02 (3), 196.20 (4) (d) and 227.11, Stats. Under s. 196.02 (3), Stats., the Commission may “adopt reasonable rules to govern its proceedings and to regulate the mode and manner of all inspections, tests, audits, investigations and hearings.” Section 227.11, Stats., provides that the Commission “may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.” In addition, under s. 196.20 (4), Stats., “[t]he [C]ommission shall promulgate a rule.”

B. Statute Interpreted

This rule interprets ss. 196.06 and 196.20 (2) (m) and (4), Stats.

C. Related Statutes or Rules

Section 196.192 (2) (a), Stats., relates to the rule because under s. PSC 116.02 (1) (d), a payment made in conjunction with retail customer tariffs pursuant to this statute for voluntary curtailable load is an item that contributes to fuel cost.

Chapter PSC 117 relates to the rule because “opportunity sale,” as defined in s. PSC 117.03 (14), is included in the calculation of “energy market sale” under s. PSC 116.02 (1) (c). In addition, “planning reserve margin,” as defined in s. PSC 117.03 (16), is included in the calculation of “energy market purchase” under s. PSC 116.02 (2) (a).

D. Brief Summary of Rule

Chapter 196, Stats., confers upon the Commission exclusive authority to establish just and reasonable rates for public utility service. *Waukesha Gas & Electric Co. v. Railroad Commission of Wisconsin*, 181 Wis. 281, 287, 194 N.W. 846 (1923). Under s. 196.03 (1), Stats., a public utility must “furnish reasonably adequate service and facilities” at just and reasonable rates. Section 196.20 (2m), Stats., declares that a public utility may only increase its rates “by order of the [C]ommission, after an investigation and opportunity for hearing.” Also, if the Commission “finds rates, . . . to be unjust, unreasonable, insufficient . . . or unlawful, the commission shall determine and order reasonable rates . . . to be imposed, observed and followed in the future.” Section 196.37 (1), Stats. The Commission also has the power to prescribe the manner and form in which a utility records its business transactions under s. 196.06, Stats. This power includes requiring the use of deferral accounting when necessary.

During periodic rate case proceedings, the Commission finds reasonable forecasts of the utility's revenues and costs and establishes rates designed to give a utility the opportunity to recover its costs plus a reasonable rate of return on equity. Except for the cost of fuel used to generate electricity, significant differences between forecasted and actual costs rarely occur. Significant discrepancies between the predicted and actual fuel cost occur because of the volatile nature of this cost. These shifts in fuel cost may cause rates to become unjust and unreasonable, requiring a rate change.

As early as the 1920s many state utility commissions, including Wisconsin's, allowed a utility to place in its tariff a formula under which rates adjusted automatically according to changes in fuel cost. More than 25 years ago the Wisconsin Legislature prohibited large investor-owned electric utilities from using this automatic adjustment clause by enacting s. 196.20 (4), Stats. Intended to add public scrutiny to rate changes while recognizing the need for a quick response, this section authorized the Commission to order a rate increase caused by "an increase in fuel costs . . . of an extraordinary or emergency nature, . . . after a hearing limited in scope to the question of the increase in fuel costs." Section 196.20 (4) (c), Stats. Section 196.20 (4) (d), Stats., directs the Commission to promulgate a rule with respect to fuel cost rate adjustments.

In the mid-1980s, the Commission created ch. PSC 116. The rule provided a process by which the rates for the state's large investor-owned electric utilities may be changed to reflect extraordinary or emergency fuel cost fluctuations. This rule was last revised in 2002. However, the current version of the rule does not adequately address rapidly changing circumstances affecting fuel costs. These circumstances include the following factors: (1) the implementation of Midwest Independent Transmission System Operator (MISO) Day 2 Market, (2) increased demand on some fuels, (3) increased transportation costs of some fuels, and (4) the effects of severe weather on the availability of some fuels. This increased volatility has significantly augmented a utility's risk of an unreasonable loss when costs go up and a customer's risk of paying unreasonable rates when costs go down. This situation prompted the Commission to redesign the fuel cost rate adjustment process, resulting in this rule.

The rule establishes a new process by which the rates for the state's large investor-owned electric utilities may be changed to reflect changes in the cost of fuel. However, the rule does not allow a utility to increase rates without prior hearing or use an "automatic adjustment clause" prohibited under s. 196.20 (4) (b), Stats. The process requires a utility to submit to the Commission an annual fuel cost plan that forecasts, for a one-year period, the cost of specified fuel items. These fuel cost items include estimates for the cost of materials that are converted to electrical energy, as well as items and programs that offset the cost of, or provide less expensive alternatives to, those materials. The Commission reviews each utility's fuel cost plan and, after a hearing, establishes rates that reflect the approved fuel cost estimates.

During the course of the year to which the plan applies, the rule requires a utility to apply deferral accounting treatment to the actual costs incurred for fuel cost items. The Commission then reconciles the difference between the forecasted and the actual, reasonable and prudently incurred fuel cost on an annual basis. After a hearing, the Commission approves a reasonable

adjustment to rates to implement this reconciliation. If extraordinary circumstances during the plan year cause the projected average annual fuel cost to differ materially from the forecast of the average annual fuel cost used in an approved fuel cost plan, and the projected absolute value, at current rates, of the difference between these amounts at the end of the plan year likely will be of sufficient magnitude to cause a material change to rates, the Commission may adjust rates during the plan year to avoid a reconciliation that causes a material change in rates. However, while the Final Rule imposes no limit to the number of mid-year rate decreases the Commission may order, no utility may obtain a mid-year increase in rates more than once during a plan year.

2009 Wis. Act 403 repealed and recreated s. 196.20 (4) (c) 1., Stats. This law now requires that the Commission “shall defer any under-collection or over-collection of fuel costs that are outside of the utility’s symmetrical fuel cost annual tolerance, as established by the commission, for subsequent rate recovery or refund.” Furthermore, s. 196.20 (4) (c) 2., Stats., establishes that “[t]he commission may commence a proceeding to adjust rates for an electric public utility outside of a general rate case proceeding if the utility’s actual fuel costs are outside of the utility’s fuel cost annual tolerance.”

The Commission approved this Final Rule at its open meeting on August 25, 2010, by a 2-1 vote.

E. Comparison with Existing or Proposed Federal Legislation

No comparable federal regulations exist. The Final Rule does not conflict with, overlap, or duplicate other rules or federal regulations.

F. Comparison with Similar Rules in Surrounding States

Illinois, Iowa, and Minnesota allow rate regulated utilities to adjust rates based on a formula specified in that state’s administrative code and included in the utility’s approved tariff. Rates adjusted in this manner do not require a Commission order or hearing. As part of electric restructuring in Illinois, the largest electricity providers opted out of this method of cost recovery.

Michigan allows a utility to escrow discrepancies between the fuel cost forecasted in rates and the actual cost. The Michigan Public Service Commission reconciles the difference between the forecasted and the actual fuel cost on an annual basis and, after a hearing, approves an adjustment to rates to implement this reconciliation. The Commission’s Final Rule is modeled after the Michigan process.

G. Data and Methodology

The factual data and analytical methodologies the Commission used to develop the rule originate from its extensive ratemaking experience, including its 25 years of experience implementing fuel cost rate adjustment rules, the expertise of Commission accounting and engineering staff, and comments from utility and ratepayer organizations provided over a two year collaborative process. This process brought Michigan's treatment of fuel costs to the Commission's attention and formed the basis of the rule as modified to fit circumstances in Wisconsin. Evidence of the increased volatility of fuel costs has also been documented in many recent rate cases before the Commission. Furthermore, the Commission's investigation of captive rail service and its continued monitoring of MISO's Day-2 Market implementation informed the Commission of the impacts that shipping and transmission charges have on the cost of delivered fuel.

H. Effect on Small Business

The rule has no effect on small business because it relates only to an "electric public utility" as defined under s. 196.20 (4) (a) 2., Stats. This definition applies only to the state's six largest investor-owned utilities. The rule therefore qualifies for the exception from small business considerations under s. 227.114 (8) (b), Stats.

I. Agency Contact Person

Questions from the media may be directed to Teresa Weidemann-Smith, Governmental and Public Affairs, at (608) 266-9600. Other questions regarding this matter should be directed to docket coordinator James Wagner at (608) 267-9768, or James.Wagner@wisconsin.gov; or Robert Norcross at (608) 266-0699, or Robert.Norcross@wisconsin.gov. Hearing or speech-impaired individuals may use the Commission's TTY number. If calling from Wisconsin use (800) 251-8345; if calling from outside Wisconsin use (608) 267-1479.

J. Accommodation

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the docket coordinator listed above.

TEXT OF THE RULES

SECTION 1. Chapter PSC 116 is repealed and recreated to read:

CHAPTER PSC 116

FUEL COST

PSC 116.01	Definitions.
PSC 116.02	Fuel cost.
PSC 116.03	Fuel cost plan.
PSC 116.04	Deferral accounting.
PSC 116.05	Reporting.
PSC 116.06	Deferred account balance calculation.
PSC 116.07	Reconciliation.
PSC 116.08	Mid-year rate adjustment.

PSC 116.01 Definitions. In this chapter:

- (1) “Annual fuel cost” means actual fuel cost over a plan year.
- (2) “Annual native system requirement” means the native system requirement in megawatthours over a plan year.
- (3) “Associated transmission service” means the cost of transmission service incurred outside a utility’s transmission organization, but not any cost associated with a purchased power contract the utility uses to meet its planning reserve requirement.
- (4) “Average annual fuel cost” means the annual fuel cost divided by the annual native system requirement.
- (5) “Capacity” means the continuous load-carrying ability of electric generation expressed in megawatts.
- (6) “Commission” means the public service commission.

(7) “Energy” means the amount of electric generation over a period of time, expressed in megawatthours.

(8) “Energy market purchase” means the cost of purchasing energy or capacity, or both, used to supply electricity to a customer served by the utility. The cost includes marginal energy price, associated transmission service and transmission losses and congestion. The cost excludes capacity or associated transmission service purchased to satisfy a utility’s planning reserve margin, as defined in s. PSC 117.03(16).

(9) “Energy market sale” means an opportunity sale, as defined in s. PSC 117.03 (14), whether it is an in-state or out-of-state sale. The revenue from an energy market sale includes marginal energy prices, transmission loss, congestion, associated transmission service, and any other revenue resulting from the sale.

(10) “Excess revenues” means revenues in the plan year that provide a utility with a greater return on common equity than authorized by the commission. For the plan year, the following costs and revenues are not included in the calculation of actual return on common equity for the combined utility:

- (a) Charitable contributions and other donations not related to providing utility service.
- (b) Penalties.
- (c) Costs of political and related activities.
- (d) Promotional advertising.
- (e) Gain or loss on the sale of non-utility assets.
- (f) Imprudently incurred costs.

(11) “Fuel” means all of the following used to generate electricity:

- (a) Coal.

- (b) Natural gas.
- (c) Nuclear fuel.
- (d) Oil.
- (e) Any other type of material converted to electric energy, including biomass.

(12) “Native system requirement” means the actual energy sold to customers, energy used by the utility, and line losses. In this subsection, “line losses” means the loss of energy in the operation of an electric system primarily attributable to the energy’s transformation to waste heat in electric conductors and apparatus. “Native system requirement” does not include energy market sales.

(13) “Plan year” means the 12-month period identified in a fuel cost plan.

(14) “Transmission organization” means a transmission organization, as defined in 18 CFR 39.1 (in effect on the effective date of this chapter), that is used by a utility to serve Wisconsin retail customers.

(15) “Utility” means an “electric public utility” as defined in s. 196.20 (4) (a) 2., Stats.

PSC 116.02 Fuel Cost. (1) For any month or longer period of time, a utility shall calculate fuel cost as the net of the costs and credits for all of the following during the time period:

- (a) Fuel.
- (b) Energy market purchase.
- (c) Energy market sale.
- (d) Voluntary curtailable load program, including any payment made to a retail customer under a tariff authorized under s. 196.192 (2) (a), Stats.
- (e) Direct load control program. In this paragraph, “direct load control program” means an event-based, payment-to-customers program under which a utility pays a firm customer to reduce

its demand when system constraints threaten reliable service. The cost of a direct load control program includes all associated costs except any associated equipment cost or standard monthly credit.

(f) Any tools to manage fuel cost price risk implemented under a risk management plan approved by the commission and included in the fuel cost plan.

(g) Renewable resource credits.

(h) Emission allowances, including allowances for sulfur dioxide and carbon dioxide.

(i) The cost of chemicals used to control emissions.

(2) (a) If a utility uses a transmission organization to transact an energy market purchase, the utility shall calculate the cost of associated transmission service for that purchase as the sum of the cost of all of the following:

1. Financial transmission rights or similar related instruments transacted under a risk management plan approved by the commission.
2. Ancillary services included in a fuel cost plan.
3. Other transmission organization energy market charges and credits included in an approved fuel cost plan.

(b) The cost of associated transmission service does not include charges for network transmission service.

PSC 116.03 Fuel cost plan. (1) Annually, a utility shall file a proposed fuel cost plan as part of an application to open or reopen a general rate case proceeding or, if the utility does not file a general rate case, the utility shall file a proposed fuel cost plan as part of a proceeding limited in scope to fuel cost. A utility shall file a proposed fuel cost plan no more than 360 days or less than 150 days before the beginning of the plan year.

(2) A utility shall include in a proposed fuel cost plan the following information for the plan year:

- (a) A forecast of the average annual fuel cost.
- (b) A forecast of the annual fuel cost by fuel type.
- (c) A forecast of the annual native system requirement. In a utility's reopened general rate case proceeding or in a proceeding limited in scope to fuel cost, the applicable annual native system requirement is the same as the commission-approved forecast in the utility's most recently approved general rate case proceeding.
- (d) Detailed input of the economic dispatch model used to forecast fuel cost.
- (e) Detailed output of the economic dispatch model used to forecast fuel cost.
- (f) All inputs and allocators used to calculate the forecast of the annual average fuel cost and the forecast of the annual native system requirement.
- (g) Associated transmission service purchased or sold.
- (h) Any other information requested by the commission.

(3) After hearing the commission shall approve a fuel cost plan, with any modifications or conditions the commission considers appropriate. The commission shall establish a utility's rates in accordance with the approved fuel cost plan, subject to reconciliation under s. PSC 116.07.

(4) Approval of a fuel cost plan by the commission is not a determination that the fuel cost plan is reasonable or prudent for reconciliation purposes under s. PSC 116.07.

PSC 116.04 Deferral accounting. Subject to reconciliation under s. PSC 116.07, a utility shall apply deferral accounting to all of its actual cost for items in an approved fuel cost plan and to all amounts collected or credited under ss. PSC 116.07 and PSC 116.08.

PSC 116.05 Reporting. (1) A utility shall file a report with the commission that includes the actual cost for items in an approved fuel cost plan, native system requirement, and the use of items in the approved fuel cost plan by item and energy source. The report shall also include the average monthly figure for each category for the plan year to date.

(2) A utility shall file the report according to a schedule the commission establishes. Upon written request, the commission may grant a utility an extension of up to 30 days for the filing of a report.

PSC 116.06 Deferred account balance calculation. (1) A deferred account balance debit shall be calculated using the following formula:

If $AAFC \geq (AAFCF \times (1+FCT))$

Then $DABD = WJR \times [AAFC - (AAFCF \times (1 + FCT))]$

Where $DABD =$ Deferred account balance debit.

$WJR =$ Wisconsin jurisdictional share of the annual native system requirement.

$AAFC =$ Average annual fuel cost.

$AAFCF =$ Forecast of the average annual fuel cost in the approved fuel cost plan.

$FCT =$ Fuel cost tolerance.

(2) A deferred account balance credit shall be calculated using the following formula:

If $AAFC < (AAFCF \times (1-FCT))$

Then $DABC = WJR \times [(AAFCF \times (1 - FCT)) - AAFC]$

Where $DABC =$ Deferred account balance credit.

WJR = Wisconsin jurisdictional share of the annual native system requirement.

AAFC = Average annual fuel cost.

AAFCF = Forecast of the average annual fuel cost in the approved fuel cost plan.

FCT = Fuel cost tolerance.

(3) A utility's fuel cost tolerance shall be set at plus or minus two percent, unless the commission sets a different percentage when approving a fuel cost plan under s. PSC 116.03(3).

PSC 116.07 Reconciliation. (1) Annually, but no later than 90 days after the end of the plan year, a utility shall file an application for the reconciliation of actual cost for items in an approved fuel cost plan for the plan year.

(2) The utility in its application shall identify and explain the following:

(a) Fuel cost.

(b) Deferred account balances.

(c) Deferred account balance debit or deferred account balance credit as of the end of the plan year.

(d) Excess revenues.

(e) Deviations from the approved fuel cost plan, including differences in scheduled and in forced outage rates.

(3) The commission shall commence a proceeding to consider the application and shall conclude the proceeding no later than 240 days after the end of the plan year. The commission shall review all of the items identified in sub. (2) and may request that the utility provide any other information the commission considers appropriate.

(4) (a) If after hearing the commission finds the utility demonstrated that the deferred account balance debit is accurate and includes only prudently-expended fuel costs, the commission shall authorize the utility to recover in rates the amount of the deferred account balance debit less any amount of fuel costs already collected from customers under s. PSC 116.08, plus any fuel costs already credited to customers under s. PSC 116.08, and less any utility excess revenues.

(b) If the amount already collected from customers under s. PSC 116.08 is greater than the deferred account balance debit found in par. (a) less any excess revenues, the commission shall order the utility to credit the difference to customers.

(c) If after opportunity for hearing the commission finds a deferred account balance credit, the commission shall order the utility to credit to customers the amount of the deferred account balance credit, plus any amount already collected from customers under s. PSC 116.08, and less any amount already credited to customers under s. PSC 116.08.

(5) For any amount under sub. (4), the commission shall do all of the following:

(a) Establish a date upon which collection may begin or credit shall begin, and a date upon which the collection or credit shall terminate.

(b) Calculate the rate of collection or credit using the current fuel cost plan.

(c) Calculate and apply interest to the amount starting on the first day of the plan year in which collection or credit occurs until the termination date established in par. (a), by applying the utility's authorized short-term debt rate to the outstanding amount, on a monthly basis.

(6) Based on the termination date established in sub. (5) (a), any amount over-collected or under-credited shall be charged to the appropriate deferred account.

PSC 116.08 Mid-year rate adjustment. (1) The commission may commence a proceeding to adjust rates for a utility during a plan year if all of the following apply:

(a) During the plan year the commission projects that the utility's average annual fuel cost will differ materially from the forecast of the average annual fuel cost used in an approved fuel cost plan.

(b) The difference is due to extraordinary circumstances.

(c) The commission finds that the absolute value, at current rates, of the difference at the end of the plan year between the commission's projection of utility average annual fuel cost and the commission's approved forecast of utility average annual fuel cost, as specified in par. (a), likely will be of sufficient magnitude to cause a material change to rates.

(2) After a hearing, the commission may approve a rate change that is designed to avoid a difference of such magnitude.

(3) The commission may not adjust an approved fuel cost plan in an order under sub. (2).

(4) A utility may not obtain an increase in rates under sub. (2) more than once during a plan year.

SECTION 2. Initial Applicability. This rule first applies to a utility's fuel cost plan approved by the commission for a plan year that begins on or after the effective date of this rule. A utility's first fuel cost plan under this rule may be filed prior to the effective date of this rule as part of its application to open or reopen a general rate case proceeding or as part of a proceeding limited in scope to fuel cost.

SECTION 3. Effective Date. This rule takes effect on the later of January 1, 2011, or the first day of the first month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.

(End)

PUBLIC HEARING ATTENDEES AND COMMENTS

The following are the names of those who attended the public hearings, submitted written comments concerning the Proposed Rule, or both:

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The following is the summary of the public comments. All commentators' citations to the Proposed Rule refer to the draft as issued for public comment on July 16, 2010, and reflect the section numbering that appeared at the time. The Commission's response to specific wording suggestion appears after each suggestion.

Citizens' Utility Board, Wisconsin Industrial Energy Group, Wisconsin Paper Council, and Wausau Paper Council filed comments collectively as the "Joint Intervenors." The Joint Intervenors supported the Proposed Rule but suggested that the Commission make the following changes:

General comments. The term "fuel cost" should be replaced throughout the rule with the term "monitored costs." Also, it should be made clear that "double-counting" of fuel costs should not be allowed to occur.

Rejected: The proposed general comments are not necessary. The terms "fuel cost" and "monitored costs" are essentially synonymous. "Fuel cost" identifies those costs at issue within the Final Rule. Also, double-counting of any cost is not allowed for ratemaking. Therefore, the addition is not necessary for the Final Rule. This would be similar to making the statement that unreasonable or imprudent expenses should not be allowed, which is basic to acceptable ratemaking by the Commission.

PSC 116.01 (10) (f). The proposed Rule includes emissions allowances in the definition of fuel, including allowances for sulfur dioxide and carbon dioxide. It is the Joint Intervenors' understanding that both the purchase and sale of emission allowances will be handled through the Rule. Assuming that understanding is correct, the Joint Intervenors do not object to inclusion of allowances in the Rule.

Rejected: The Final Rule includes only the cost of purchasing emissions allowances. Revenues from the sale of emissions allowances will continue to be deferred and reflected in rates in a subsequent rate case. This approach gives greater assurance that ratepayers will receive the full benefit of the sale of the allowances.

PSC 116.02 (2). The Proposed Rule uses the phrase "associated transmission service" but does not define it.

Accepted: The Final Rule includes a definition of "associated transmission service."

PSC 116.03 (1). The Proposed Rule provides that a utility must submit its fuel cost plan at least 120 days before the beginning of the plan year. Filing the fuel cost plan 120 days prior to a plan year beginning January 1 would mean the plan is filed in September, typically a busy month for rate cases. The utilities will likely request that the Commission issue a decision regarding every fuel plan and base rate case before the end of the year. In order to accomplish these tasks, at least 150 days should be provided for review of the fuel cost plans.

Accepted.

PSC 116.05 (2). The Proposed Rule includes a provision requiring the utilities to file fuel reports on a basis according to a schedule that the Commission establishes. The Joint Intervenors did not oppose the Commission having the option to change the deadline to file fuel reports if such a change is deemed prudent. However, the monthly fuel reporting requirement should be maintained for the foreseeable future. The Joint Intervenors proposed that the filing requirement should read, "A utility shall file the report monthly for each calendar year, unless the Commission establishes a different schedule prior to the start of the next calendar year."

Accepted.

PSC 116.06 (3). The Proposed Rule sets the tolerance band at plus or minus two percent. The Commission should maintain that tolerance band.

Accepted.

PSC 116.07 (3). The Proposed Rule requires a reconciliation proceeding to be concluded no later than 240 days after the end of the plan year. In the event that a question of prudence arises – or other reason requiring greater time than that offered in the Proposed Rule – more time should be allowed to consider the issue. Language should be added such as, "The Commission

may extend the 240-day deadline for concluding a proceeding if it determines that additional time is necessary to address the issues in question.”

Rejected: Having a deadline adds discipline to the reconciliation process. If, for some reason, more time is necessary to complete the process, the Commission can make that accommodation on its own without penalty.

PSC 116.07 (4). The Proposed Rule only requires the utilities to demonstrate that their fuel costs are prudent if a deferred account balance debit is calculated, not if a deferred account balance credit is calculated. The Commission should certify the prudence of a utility’s deferred account balance first before engaging in a debit or credit calculation. Also, the Proposed Rule articulates no standard by which the utilities must demonstrate that only prudently incurred expenses are included in the deferred account balance. The utilities should be required to demonstrate by clear and convincing evidence that their fuel costs were prudently incurred.

Rejected: No relevant precedent exists in the statutes for requiring a higher standard of proof, such as clear and convincing evidence, regarding fuel costs.

PSC 116.07 (4). Maintaining a requirement that the utilities reduce any amount collected from ratepayers by the amount of any revenues earned above their authorized return on equity creates an important and necessary incentive for the utilities to prudently forecast and manage their fuel costs. To maintain this incentive the excess revenues provision should be maintained.

Accepted.

PSC 116.07 (5) (c). Ratepayers should not be required to pay interest if the Commission determines that the utility under-recovered its fuel costs. Since the utility has complete control over the plan forecast, and over fuel purchases for generation, the ratepayers should not be expected to carry the burden of interest.

Rejected: Requiring both ratepayers and the utility to pay interest on under-recovered and over-recovered fuel costs, respectively, is an appropriate, symmetrical treatment, consistent with 2009 Wis. Act 403.

PSC 116.08 (1) (c). The Proposed Rule should clearly define the circumstances when a mid-year adjustment can be made. Language should be added that requires the cumulative variance from the plan year to be at least 10 percent before a mid-year adjustment could apply.

Rejected: Having a defined variance before the mid-year adjustment could apply takes away the Commission’s flexibility in responding to unique, unanticipated events. There could be circumstances in which it makes sense to allow a mid-year adjustment when the variance is less than 10 percent and others in which an adjustment is not appropriate when the variance exceeds that amount. Leaving that determination to the Commission is more likely to result in sound ratemaking.

The Joint Utilities commented generally in support of the Proposed Rule. They suggested the Commission make the following changes to the Rule:

PSC 116.07 (4). This section, on excess revenues, should be eliminated. Under 2009 Wis. Act 403, an excess revenues provision is unlawful. The first section of the Act:

196.20 (4) (c) 1. If an electric public utility has an approved fuel cost plan, the commission shall defer any under-collection or over-collection of fuel costs that are outside of the utility's symmetrical fuel cost annual tolerance, as established by the commission, for subsequent rate recover or refund.

Including an excess revenues provision in the Proposed Rule would be directly at odds with the mandate in this section of the Act. If the utility earned more than its authorized return the excess revenues provision would provide for recovery in subsequent rates of not all, but at best, only part of the under-collection of fuel costs. Unlike Commission staff's Accounting Policy Team's Statement of Position 94-01 (SOP 94-01) that allows Commission discretion on allowing deferred costs in rates, 2009 Wis. Act 403 does not allow the Commission this discretion. Unlike SOP 94-01, the Act mandates that the deferred amounts be recognized in rates. In addition, if an excess revenues provision is included, the Proposed Rule would need to clearly define how excess revenues and deficient revenues are to be measured and determined.

Rejected: The referenced section of the Act does not require the Commission to include recovery of deferred fuel costs in rates. This section requires deferral of over- or under-collected fuel costs, but under generally accepted accounting practices deferral of costs does not guarantee rate recovery of costs. Instead, that section means that rate recovery is at the discretion of the Commission. Rate recovery of a deferred cost is allowed when a unique event occurs and without rate recovery the utility would experience a material degree of financial harm. The excess revenues provision simply reduces the amount of rate recovery of a deferred fuel cost so that the utility does not earn in excess of its authorized return. If a utility is able to earn in excess of its authorized return even though its fuel costs are higher than anticipated, the utility likely experienced lower than anticipated costs elsewhere in its operations. Limiting recovery of deferred fuel costs so that the utility does not increase rates while earning in excess of its authorized return leaves the utility shareholder in a reasonable financial position and does not burden ratepayers with all of the utility's higher fuel costs, when the utility is earning more than its authorized return.

The Joint Utilities are correct that the Proposed Rule must include a description of what costs and revenues should be included in the calculation of earned income in order for excess revenues to be determined. In s. PSC 116.01 (8), the Final Rule now includes a list of costs and revenues that should not be included in determining earned return. The list is made up of costs and revenues that are unrelated to the provision of electric service.

PSC 116.06 (3). The Proposed Rule should set the fuel cost tolerance band at plus or minus one percent or smaller. The Proposed Rule establishes a tolerance band of plus or minus 2 percent, which has been the level used to date, but escalating fuel costs have caused monitored

fuel costs to increase dramatically in total dollars and to become an increasing share of the overall budget for electric utilities. As a result, a one percent change in fuel costs today has a revenue requirement impact similar to that of a 2 or 3 percent change several years ago.

Rejected: Maintaining the 2 percent fuel cost tolerance band provides an appropriate incentive for the utility to reduce its fuel costs. This section also allows the Commission to change the tolerance band percentage if a showing can be made that 2 percent is no longer a reasonable level.

PSC 116.07 (4) (a). The Proposed Rule should include a definition of prudently-incurred fuel costs.

Rejected: It is not necessary to include such a definition. Instead, a determination of prudently-incurred fuel costs, like other utility-incurred non-fuel costs, will be made on a case-by-case basis.

PSC 116.02. The Commission should include as “fuel cost” the cost of chemicals to control emissions and by-products from generation, such as fly-ash or gypsum.

Partially accepted: The Final Rule includes the cost of chemicals to control emissions in the list of fuel cost items since it varies with the amount of generation and can be specifically identified. The addition of by-products, however, is not accepted in the list of fuel cost items since the definition of by-products can be interpreted broadly and will be subject to dispute.

PSC 116.06 (1) and (2). The term “Wisconsin jurisdictional share of the annual native system requirement” should be expanded to include “in megawatthours.”

Accepted.

SECTION 2. The effective date of the Proposed Rule should be changed as follows:

SECTION 2. INITIAL APPLICABILITY. This rule first applies to a utility’s fuel cost plan approved by the Commission for a plan year that begins on or after the effective date of this rule. A utility’s first fuel cost plan under this rule may be filed prior to the effective date of this rule as part of a utility’s application to open or reopen a general rate case proceeding or as part of a proceeding limited in scope to fuel cost. Until this rule is repealed and recreated applies to a utility, ch. PSC 116 applies to that utility.

Accepted in concept, with drafting changes to delete unnecessary text.

PSC 116.03 (2) (c). Commission staff proposed modifying this rule, to make it clear that the sales forecast used in the fuel cost plan for the second year of a biennial rate case proceeding is the same sales forecast as approved by the Commission in the first year of that proceeding.

Accepted.

Wisconsin Legislative Council Rules Clearinghouse

Ronald Sklansky
Clearinghouse Director
Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director
Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 08-070

AN ORDER to repeal and recreate chapter PSC 116, relating to electric rate changes due to the cost of fuel.

Submitted by PUBLIC SERVICE COMMISSION
07-03-2008 RECEIVED BY LEGISLATIVE COUNCIL.
07-31-2008 REPORT SENT TO AGENCY.

RNS:JES

Wisconsin Legislative Council Rules Clearinghouse

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LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO ✓

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES ✓ NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO ✓

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES ✓ NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES ✓ NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO ✓

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO ✓

Wisconsin Legislative Council Rules Clearinghouse

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CLEARINGHOUSE RULE 08-070

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. The analysis should include all of the headings in s. 1.02 (2), Manual.
- b. Sections PSC 116.01 (9) and 116.02 (1) (c) both use the term “energy market sales.” Section PSC 116.02 (1) (c) contains a definition of this term that applies in that paragraph. If the commission intends “energy market sales” in s. PSC 116.01 (9) to have the same meaning as in s. PSC 116.02 (1) (c), then the definition in s. PSC 116.02 (1) (c) should be moved to the section in the rule on definitions, s. PSC 116.01. If the commission intends that these two uses convey different meanings of “energy market sales,” then the commission should clarify that difference.
- c. The second par. (a) in s. PSC 116.07 (2) should be numbered as par. (b).

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In the analysis accompanying the rule, the list of statutes authorizing rule-making should identify the specific provisions in the statutes that explicitly authorize rule-making, whereas the list of statutes interpreted by the rule should identify statutes interpreted. This drafting style was not followed in the analysis as, of the statutes listed under statutory authority and statutes interpreted, only ss. 196.02 (3), 196.20 (4) (d), and 227.11 (2) (a), Stats., authorize or require rule-making. In identifying statutes interpreted by the rule, the commission should not include broad references to statutes that do not apply to the subject matter of the rule. For example, s. 196.20 (2m), (2r), (3), and (5), Stats., only apply to telecommunications utilities or cooperatives and not to electric public utilities.
- b. In the analysis accompanying the rule, the explanation of agency authority does not address how two sections listed in the statutory authority for the rule (and more properly placed in the

statutes interpreted pursuant to the preceding comment), ss. 196.06 and 196.395, Stats., provide authority for the commission to promulgate the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PSC 116.02 (1) (intro.) uses the undefined term “time period.” If this term is equivalent to the defined term “plan year,” then “plan year” should be used in this provision. If they are not comparable, the commission should clarify the difference.

b. The rule contains a number of undefined terms of art. See, for example, “uplift items,” “day-ahead revenue sufficiency distribution amounts,” and “real-time revenue sufficiency distribution amounts” in s. PSC 116.02 (3) (a) 3. and “allocators” in s. PSC 116.03 (2) (f). The department should review the entire rule to determine if these and other terms of art should be defined to ensure the consistent application of the rule.

Response to Report from Legislative Council Rule Clearinghouse

2. Form, Style and Placement in Administrative Code

- a. Accepted. Section B of the Report to the Legislature changed to reflect the suggestions.
- b. Accepted. Changes made.
- c. Accepted. Changes made.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. Accepted. Section B of the Report to the Legislature changed to reflect the suggestions.
- b. Accepted. Section B of the Report to the Legislature changed to reflect the suggestions.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. Rejected: The “time period” is already clarified in the introduction as “any month or longer period of time...”
- b. Accepted. The Commission deleted the specified terms for energy market charges.

<p>2009-2010 Session</p> <p>LRB or Bill No./Adm. Rule No. PSC 116</p> <p>Amendment No. if Applicable</p>							
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<p>Subject Revision to Cost of Fuel Rule PSC 116</p>							
<p>Fiscal Effect</p> <p>State: <input checked="" type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.</p> <table style="width:100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p> </td> <td style="width: 50%; border: none; vertical-align: top;"> <p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p> </td> </tr> </table>		<p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p>	<p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p>				
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<p>Assumptions Used in Arriving at Fiscal Estimate</p> <p><u>State Fiscal Effects</u></p> <p>There are no estimated state fiscal effects from the draft revisions to the Cost of Fuel Rule (PSC 116).</p> <p>As drafted, the revised Cost of Fuel Rule standardizes the process under which the Commission can review and approve large, investor-owned, electric utility rate changes due to fuel costs. The current rule requires all utilities to report their fuel costs monthly, but the Commission may review and approve rate changes due to fuel costs only periodically during rate proceedings or due to emergency or extraordinary circumstances. The revised rule establishes standard fuel cost reporting requirements for all utilities and allows the Commission to review utility reports, reconcile fuel costs, and adjust rates due to fuel costs as specified in the rule for applicable utilities, annually. The revised rule also allows for mid-year rate adjustment exceptions as needed.</p> <p>Because utilities currently report fuel costs monthly, the revisions to the Cost of Fuel rule do not appreciably change the analytical and reporting workload for state staff, and therefore do not increase or decrease state costs. In addition, utility service rates paid by customers, including state agencies, are not anticipated to increase or decrease due to the revisions of the Cost of Fuel rule. Therefore this revised rule is not anticipated to have a state fiscal effect.</p> <p><u>Local Fiscal Effects</u></p> <p>The revised Cost of Fuel Rule is not estimated to have a local fiscal effect. A local fiscal effect would occur if the revisions had the result of increasing or decreasing utility service rates for customers, which include Local Governments. The revisions to the fuel rule are not anticipated to change utility service rates. Therefore, the revised Cost of Fuel Rule is not estimated to have a local fiscal effect.</p>							
<p>Long-Range Fiscal Implications</p> <p>None</p>							
<p>Agency/Prepared by: (Name & Phone No.) Anne Olson 267-9086</p>	<p>Authorized Signature/Telephone No. Anne Olson 267-9086</p>						
<p>Date 8/26/2010</p>							